

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES

V.

CRIMINAL NO. 05 10203 RWZ

JULIO VIANA

**MOTION FOR RECONSIDERATION OF ORDER OF  
DETENTION DATED JULY 13, 2004**

For the following grounds the defendant moves for reconsideration of the Court's order of detention of July 13, 2004:

1. On page 12 of the Court's Order detaining the defendant, the Court says: "However, if he is found guilty of these offenses, then he will almost certainly be deported following completion of his sentence."
2. Immigration counsel for the defendant vehemently disagrees with the Court on this issue.
3. Attached please find a report in letter form concerning this defendant from Christopher W. Drinan, Esquire of the law offices of John K. Dvorak, P.C.
4. If the defendant's immigration status is as described in the attached letter, the conclusions reached by This Court in its order at not justified, and this defendant should be admitted to bail on conditions.
5. Whether or not the defendant's brother has committed an offense involving the smuggling of aliens should have no place in the analysis of whether this defendant poses any risk of flight (we suggest none), and whether there are conditions that This Court can impose that would assure this defendant's appearance in court as directed.

## REQUEST FOR ORAL ARGUMENT

The defendant requests a hearing, believing that oral argument will assist the Court. Defendant further requests the presence of the defendant at any hearing on this motion.

DATED: November 9, 2005

/s/Roger Witkin  
6 Beacon Street, #1010  
Boston, MA 02108  
Tel. 617 523 0027  
Fax 617 523 2024  
BBO No. 531780

**LAW OFFICE OF JOHN K. DVORAK, P.C.**

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ATTORNEYS AND COUNSELLORS AT LAW

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John K. Dvorak  
Christopher W. Drinan  
Susan Zak

17 October 2005

Roger Witkin, Esq.  
6 Beacon Street  
Boston, MA 02108

**RE: VIANA, Julio**  
**A78 - 315 - 173**

Dear Attorney Witkin:

I am responding to your request for an update regarding the Immigration status of our mutual client Julio Viana.

Mr. Viana is currently in removal (deportation) proceedings before the Boston Immigration Court. These proceedings were instituted before Mr. Viana's recent arrest on criminal charges. Mr. Viana is charged with being an alien present in the United States without being inspected and admitted (i.e. illegal entry). These charges were conceded at a prior hearing, and Mr. Viana was found to be removable from the United States by the Immigration Judge. Mr. Viana was then granted a continuance to prepare his applications for relief from deportation.

Mr. Viana is seeking to apply for permanent resident status in the U.S. based on:

- 1) Cancellation of Removal – An alien unlawfully present in the United States can seek to apply for permanent residency if: (a) he has been physically present in the United States for ten (10) years, excepting short absences, and; (b) he has a U.S. citizen or lawful permanent resident spouse, parent or child who would suffer extreme hardship as a result of the alien's deportation. Mr. Viana meets the threshold requirements for this form of relief.
- 2) Permanent Residency as a Derivative Beneficiary of his Spouse's Application – Mr. Viana's spouse was previously granted permanent resident status as a result of an immigrant visa petition filed by her employer. Mr. Viana is eligible to apply as a derivative beneficiary of her application.

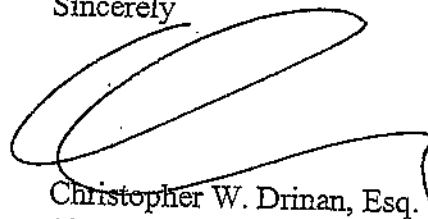
Mr. Viana was scheduled for a hearing on his applications for relief on August 12, 2005. Unfortunately, he had been arrested before this date, and the hearing could not go forward in his absence. Because of the impossibility of conducting a hearing on Mr. Viana's applications without his presence, the case has been "administratively closed" by the Immigration Court (this merely means that the case has been removed from the Court's active docket – it can be recalendared on the motion of either party should Mr. Viana become available to attend a hearing).

Based on my analysis of the situation, Mr. Viana would remain eligible to apply for his permanent residency, even in the case of a conviction on the charges at issue. The Board of Immigration Appeals has previously held that 31 U.S.C §5324(a)(3) (structuring transactions) does not constitute a "crime involving moral turpitude", and therefore is not a conviction resulting in deportability or inadmissibility. (See In re L-V-C, Int. Dec. No. 3382 (BIA 1999)). The BIA has apparently not specifically ruled in regard to 18 U.S.C. §1960 (unlicensed money remitting). However, I expect that this will likewise be considered a "regulatory" offense, and thus not to constitute a crime of moral turpitude. However, the applications filed by Mr. Viana are subject to the discretion of the Immigration Judge, who is free to consider any convictions as negative equities in regard to his decision on the case.

Mr. Viana is also eligible for an Immigration bond, as he has not been convicted of any crimes that would place him in a "mandatory detention" category. Likewise, even assuming a conviction on the charged offenses, he should remain eligible for an Immigration bond, as the charged offenses are not crimes of moral turpitude, nor do they fall into the category of offenses that implicate the mandatory detention criteria. Of course, any determination in regard to bond is within the discretion of the Immigration Judge, who can impose whatever conditions he sees fit to compel attendance to future hearings. However, Mr. Viana is, in my opinion, eligible for release under such conditions.

Please feel free to contact me if you have any further questions.

Sincerely



Christopher W. Drinan, Esq.  
(617) 723-7836  
cdrinan@johnkdvorak.com

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day courtesy copies of the within documents were served upon Lisa Roland, Courtroom Clerk for Honorable Charles B. Swartwood, III, Federal Courthouse, 595 Main Street, Worcester, MA 01602 2076, AUSA Nadine Pellegrini, U.S. Attorney's Office, 1 Courthouse Way, Suite 9200, Boston, MA 02210 and Geoffrey G. Nathan, Esq. 90 Quincy Shore Drive, Suite 705, Quincy, MA 02171, by mail and electronic filing, which was e-filed this day.

/s/ Roger Witkin

Roger Witkin  
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BBO No. 531780

DATE: November 9, 2005